



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** John W. Wright  
**File:** B-236750  
**Date:** November 7, 1989

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### **DECISION**

The issue in this case is whether Mr. Wright, an employee of the Bureau of Prisons, may be paid overtime under 5 U.S.C. § 5542 (1982) for activities related to firefighting while performing his job as safety manager. His claim was denied by our Claims Group<sup>1/</sup> on the basis that the overtime was not ordered or approved and there was no inducement by Mr. Wright's superiors to continue to perform overtime. Mr. Wright in effect appeals that denial and contends that written descriptions of his duties and training schedules amount to official approval of the overtime he worked, although he concedes that after he began as safety manager he was informed that overtime compensation was not payable for after-duty training and community service calls.

The basic requirement for entitlement to overtime compensation under 5 U.S.C. § 5542 is promulgated in the implementing regulation, 5 C.F.R. § 550.11(c) (1988), which provides that overtime work must be ordered or approved in writing by an official to whom this authority has specifically been delegated. It has been held that this requirement is met if the employee is "induced" either by the authorized official or with his knowledge and acquiescence, to perform overtime through a reasonable expectation or fear that some penalty will befall him if he does not do so. Baylor v. United States, 198 Ct. Cl. 331 (1972), and cases cited. However, where there is no more than a "tacit expectation" that the employee will work overtime, such

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<sup>1/</sup> Z-2866145, June 29, 1989.

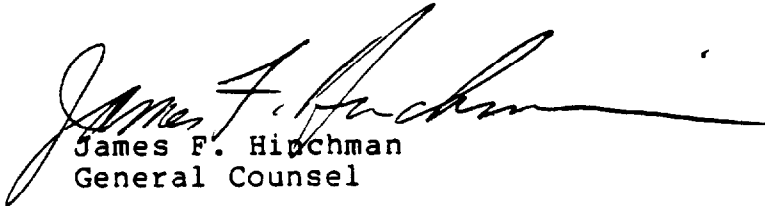
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expectation, even if indulged in by the authorized official, does not amount to an official order or approval of overtime. See Carl L. Haggins, B-216952, Oct. 18, 1985; Jim L. Hudson, B-182180, Jan. 6, 1982.

In this case, Mr. Wright has not demonstrated that there was any more than a tacit expectation on the part of his supervisors that he would be doing work on an overtime basis. Regarding the training for the inmate fire brigade after normal duty hours, it was Mr. Wright who actually arranged for the training during the off-hours. Also, the job description and prison fire control plan requiring training or escort duty for community assistance calls do not specifically direct that these activities be performed after regular duty hours, and only required Mr. Wright's participation "if available."

Accordingly, we sustain our Claims Group's denial of overtime compensation in this case.

In accordance with Mr. Wright's request, we are returning to him materials, or copies thereof, he submitted with his appeal.

  
James F. Hochman  
General Counsel

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Digest

An employee of the Bureau of Prisons may not be paid overtime under 5 U.S.C. § 5542 (1982) for activities related to firefighting while performing his job as safety manager. Such overtime was not ordered or approved and there was no inducement by the employee's supervisor to continue to perform overtime work.